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C O N F I D E N T I A L SECTION 01 OF 03 WARSAW 001138

SIPDIS

EUR/OHI FOR KENNEDY AND BECKER
EUR/CE FOR PIERANGELO AND MORRIS
DRL/SEAS FOR RICKMAN

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TAGS: [PGOV](#) [PHUM](#) [PREL](#) [PL](#)
SUBJECT: GOP TO PUT FORWARD DRAFT PRIVATE PROPERTY
RESTITUTION LAW; PROSPECTS IN SEJM UNCLEAR

REF: 07 WARSAW 498

Classified By: DCM QUANRUD FOR REASON 1.4 (D)

11. (C) SUMMARY: Polish Treasury Vice Minister Krzysztof Laszkiewicz told visiting Special Envoy for Holocaust Issues Ambassador J. Christian Kennedy September 12 that draft legislation on compensation for WWII and Communist-era confiscations is ready to be introduced to the Sejm (the lower house of parliament) once it is approved by the Council of Ministers, perhaps in October. Ewa Ziomecka, State Secretary for Social Issues in the Presidential Chancellery, indicated that President Kaczynski would like to resolve the issue, but that he and Law and Justice (PiS) party leader Jaroslaw Kaczynski expect the Government to request their cooperation. Both Ziomecka and Laszkiewicz confirmed that Sejm Speaker Bronislaw Komorowski has pledged to move the bill through parliament as quickly as possible once it is introduced. Other PiS and Democratic Left Alliance (SLD) insiders offered a different take, saying they were not sure that their parties would be able to support the draft legislation though individual members might. All interlocutors agreed that the legislation's success will likely depend on its cost to the national budget and Government-opposition dynamics. Several also emphasized the need to launch a major PR campaign to overcome widespread misinformation and skepticism about the nature and purpose of the legislation. END SUMMARY.

TREASURY PREVIEWS DRAFT LEGISLATION

12. (SBU) Treasury Vice Minister Laszkiewicz previewed a draft bill currently under interministerial review (paras 7-11 contain more detailed information). Pending completion of this review, the bill will be forwarded to the permanent committee of the Council of Ministers and, if accepted, on to the Council of Ministers itself in October. Laszkiewicz said that the Sejm Speaker Bronislaw Komorowski (Civic Platform, PO) had offered assurances that he would work to move the bill through the required legislative procedure as quickly as possible. (COMMENT: Komorowski expressed similar intentions in a January 2008 meeting with Ambassador Kennedy. END COMMENT.) Laszkiewicz noted that parliamentary amendments had led then-President Kwasniewski to veto similar legislation in 2001, and amendments could be attached this time around as well. Laszkiewicz reiterated that the GoP is determined to get the legislation passed this time.

FILING PROCEDURES FOR CLAIMS

13. (SBU) Laszkiewicz said claimants will have twelve months from the date of the legislation's passage to file an initial claim (only the application) and will be permitted subsequently to submit supporting documents up to two years afterwards. Claimants would have the option of mailing their application directly to the appropriate provincial

(Wojewodztwo) authority or submitting applications through a Polish consulate abroad. Laszkiewicz said the GoP would begin to make payments two years after the law goes into effect and would strive to complete the payment process as quickly as possible. Asked about the possibility of front-loading payments to elderly claimants (or to original owners vice heirs), Laszkiewicz said such a provision could prompt legal challenges on the grounds that it violates Polish guarantees of equal treatment under the law.

PROJECTED COMPENSATION PAYMENTS

14. (SBU) In terms of cost to the national budget, Laszkiewicz said it is impossible to predict what the value of total claims will be. Given this lack of information, the GoP shifted tack from previous formulations that based compensation on a specific percentage of total claims. Instead, under the draft law, Poland will allocate no less than 20 billion PLN (approx. 8.7 billion USD) to a fund. (NOTE: Laszkiewicz confided that the Treasury Ministry had earlier predicted a total of 100 billion PLN in claims. The 20 billion PLN fund represents 20 percent of this amount. END NOTE.) Laszkiewicz said the payments would be stretched over a period of at least ten years. If the total amount of claims in any given year exceeds the amount of funds available, the legislation calls for the national budget to make up) or write off - the difference. The funds to be set aside would come from the sale of Treasury Ministry assets, including confiscated properties. "This must be done smartly," Laszkiewicz said, in order to maximize the amount of money that can be allocated to the fund.

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PRESIDENTIAL CHANCELLERY SUPPORTIVE, BUT WANTS GOVERNMENT TO TAKE FIRST STEP

15. (C) Presidential aide Ewa Ziomecka told Kennedy that President Lech Kaczynski would like to resolve the issue. However, she argued that passage of the legislation would require better relations between the Government and the President's opposition Law and Justice (PiS) party. "PiS and the Government should be natural allies" on this and many other issues, "but we are not." She said the Government would likely need to launch a comprehensive public relations campaign before the legislation is introduced in the Sejm in order to address widespread skepticism and misinformation, including the perception that restitution is primarily a "Jewish issue." To date, Ziomecka said, the Government does not seem to have developed such a strategy. In a similar vein, Ziomecka said, both the Government and the President's office would prefer that any U.S. lobbying be done quietly. If Poland is perceived as acting under foreign pressure, she explained, it will be more difficult to get the legislation passed. She speculated that the Catholic Church could play a key role in drumming up political and public support for the bill.

16. (C) Ziomecka agreed that Speaker Komorowski has expressed his intent to support the legislation and move it through the legislative procedure as quickly as possible, but added that it was not clear whether Komorowski understands the full scope of pressure abroad. Ziomecka also insisted that PiS party leader Jaroslaw Kaczynski) "a lawyer with a sense of justice") could also play a key role, but will likely insist that PO ask PiS to cooperate on the issue. Although there has been Polish press and commentariat speculation that President Kaczynski might veto property compensation legislation, Ziomecka did not mention this possibility, despite several opportunities to do so. (NOTE: In a discussion September 19 with DCM, MFA State Secretary Witold Waszczykowski said President Kaczynski would have to support the law, since it is embarrassing that Poland is one of the few countries in Central/Eastern Europe not to pass such legislation. END NOTE.)

OPPOSITION VIEWS

17. (SBU) Reaction from other PiS parliamentarians was more circumspect. Jacek Kurski, Deputy Chair of the Sejm's Finance Committee, said that PiS support would primarily depend on its impact on the budget. Kurski did not deny that there might be an electoral advantage for individual deputies who support the legislation, but implied that PiS may seek unspecified concessions from the Government on unrelated issues. He noted that PiS votes would be essential to make the legislation veto-proof. Pawel Poncyljusz, a party insider with close ties to Jaroslaw Kaczynski, said that the issue is something that Poland needs to solve and thought that approximately 50 of PiS' 166 deputies might support the legislation. Ryszard Kalisz, an SLD deputy and Chairman of the Sejm's Justice and Human Rights Committee, took a similar position, stating that he supports the project but thought it would have a mixed reception among other SLD deputies.

TREASURY: WWII ERA CONFISCATIONS WILL BE COVERED

18. (SBU) Previewing the bill for Kennedy, Treasury Vice Minister Laszkiewicz said the bill covers property that had been confiscated by decree between 1944 and 1962. He noted that many NGOs had pressed for the legislation to include property seized by the Nazi occupation as early as 1939. Although the legislation in effect covers all such property, Laszkiewicz said, it was not possible to make the legislation retroactive to 1939 because the Polish Government-in-Exile issued a decree in November 1939 declaring invalid all acts by occupying forces, including seizures of property held by Polish citizens. The newly constituted Polish communist government issued a similar decree in 1944. Because both decrees are still recognized by the Republic of Poland, using 1939 as a starting date for private property restitution would make legislation vulnerable to a legal challenge in the Constitutional Tribunal and "would not change any legal fact," given that all property seized by the Nazis was nationalized by decree of the communist authorities in 1944.

DOCUMENTATION REQUIREMENTS

19. (SBU) On the issue of documentation, Laszkiewicz said Article 75 of the Polish Administrative Procedure Code did not make it possible to accept only a claimant's written declaration of ownership. "Such a provision would be sent to

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the Constitutional Tribunal and the law would be immediately struck down." Laszkiewicz did say that Polish authorities would facilitate claimants' access to deed and mortgage registers. For that purpose a claimant's written declaration will suffice when requesting extracts from the registers. Claimants may request extracts by sending a letter to or appearing in person at the administrative court that oversees the registers. Laszkiewicz explained that the administrative court plays a dual role, i.e., both administering the registers and resolving title disputes and bookkeeping errors.

PROVISIONS FOR RECOGNITION OF INHERITANCE AND POWER OF ATTORNEY

10. (SBU) On the issue of inheritance, Laszkiewicz said it would not be necessary to conduct court hearings for acquisition of the property if a claimant inherited the property in question in another country. Under the principle of international comity, it is only required that a Polish court recognize the inheritance. Laszkiewicz insisted this is a fairly routine procedure under Article 1145 of the Polish Administrative Code. Laszkiewicz said recognition of foreign powers of attorney would also not be a problem in cases where Poland has a bilateral treaty with the claimant's country of residence that acknowledges power of attorney. He noted that this includes all signatories to the Hague Convention, which provides for mutual recognition of power of attorney. In other cases, Laszkiewicz said, a Polish

consulate abroad is empowered to recognize power of attorney, as Polish consular officers have notary authority.

¶11. (SBU) A more difficult question, Laszkiewicz said, would be to conclude a legal determination that an individual is deceased in cases where there was no death certificate or inheritance procedure, whether in Poland or abroad. In such cases, claimants would be required to present a court's recognition that the original owner is deceased and would then have to petition a Polish court to recognize the inheritance. In cases where the claimant possesses a death certificate but no inheritance procedure has been conducted, the foreign death certificate would need to be recognized by a Polish administrative court.

COMMENT

¶12. (C) The 1944 date mentioned by Laszkiewicz has caused concerns among potential American claimants, many of whom were dispossessed in 1939 under Nazi Aryanization actions. Although Laszkiewicz's explanation provides a legal rationale for the government draft bill using 1944 as a start date, we should press the Poles for at least a strong, political-level statement that the confiscations of 1939 and the rest of WWII are covered. This kind of lobbying will be necessary on other issues too, such as ease of filing, amount of the compensation to be paid out, and the period over which payouts will be made. However, further lobbying should probably await actual introduction of the draft law in the Sejm; until then, the main official to engage would be Laszkiewicz, who has been consistent in his views over the last six years about what is and is not possible under Polish law. As drafter of the earlier bill vetoed by former President Kwasniewski, he has more expertise on this subject than any other political-level figure in the current government. The Treasury Ministry released the text of the draft bill in a press release September 23.

¶13. (SBU) This message has been cleared by Ambassador Kennedy.

ASHE